Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Telephone Number Portability	)	
	)	CC Docket No. 95-116
Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association	)	
	)	

REPLY COMMENTS OF VALOR TELECOMMUNICATIONS ENTERPRISES, LLC

Valor Telecommunications Enterprises, LLC (Valor) submits the following Reply Comments in response to various comments filed on February 26, 2003 by a number of parties in the Petition for Declaratory Ruling filed by the Cellular Telecommunications and Internet Association (CTIA) on January 23, 2003.

Valor is a privately owned company, formed for the purpose of purchasing approximately 550,000 mostly rural access lines from GTE (now Verizon) in Texas, Oklahoma, New Mexico and Arkansas. These properties were acquired in 2000, and in 2002, Valor acquired Kerrville Communications Corporation, whose wholly owned subsidiary Kerrville Telephone, L.P. also serves rural customers in Texas.

VALOR OPPOSES THE PETITION

The CTIA's Petition asks the Federal Communications Commission (FCC or Commission) to issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to a CMRS provider whose service area overlaps the wireline carrier's rate center and that no agreement between the carriers, beyond the standard service-level porting agreement, is necessary.[1] Valor joins the many parties who filed comments on January 23, 2003 opposing the relief sought by CTIA. As the filing parties have stated, the CTIA Petition 1) is contrary to the Telecommunications Act of 1996 (the Act) and prior Commission rulings, 2) is premature in seeking relief, 3) would be more appropriately addressed in a rulemaking, if a public interest showing could be demonstrated, which CTIA has not demonstrated, 4) should be denied since it requires porting with only a service-level agreement and not a complete interconnection agreement and, 5) would be bad public policy if it were granted.

DISCUSSION

The issue raised by the CTIA Petition is not a new one and it demonstrates what a divisive issue this has become between the wireline and wireless industries. Although the CTIA Petition claims that the expanded local number portability (LNP) that they seek is necessary to meet the customer expectations that the Commission has created,[2] CTIA makes no strong claim that the inter-modal LNP at issue is needed at this time to foster competition. In fact, CTIA is appealing the forthcoming deadline for its own wireless LNP implementation.[3] As the United States Telecom Association (USTA) points out in its comments, CTIA in its appeal actually contends that intra-modal and inter-modal competition is flourishing without wireless LNP.[4] However, instead of standing by the position taken in its appeal, CTIA is using this filing to try to either convince the Commission to further delay wireless LNP (which appears to be the ultimate CTIA

[1] CTIA Petition at p. 1
[2] CTIA Petition at p. 4
[3] See *Cellular Telecommunications & Internet Association and Cello Partnerships, d/b/a Verizon Wireless v. FCC, No. 02-1264 (D.C. Cir.)*
[4] USTA Comments at p. 3

motive), or to cause the wireline industry enormous cost and administrative burden in the name of promoting competition.

The Commission should not fall for this bait and switch trap proposed by CTIA. The wireless industry has long used the competition argument to gain advantages over their wireline competitors. Several parties' comments reflect the unfair policy practices that have provided the wireless carriers with an advantage over the wireline industry. USTA states "As CTIA appropriately beats the drum of CMRS deregulation in response to the existence of robust competition among CMRS providers, it hypocritically petitions the FCC to increase regulatory burdens for wireline incumbents."[5] Wireless carriers are at an increasing rate being granted Competitive Eligible Telecommunications Carrier (CETC) status without having the same requirements for quality of service, equal access and carrier of last resort obligations that currently burden incumbent wireline carriers. [6] The Ohio Commission's comments recognized the current unbalanced regulatory regime between wireline and wireless carriers, noting how the FCC has allowed wireless carriers to avoid access charges in favor of the lower reciprocal compensation arrangements, while at the same time the FCC has not required wireless carriers to provide unbundled network elements to competitors as their incumbent wireline counterparts are required.[7]

The number and scope of opposing comments of the rural wireline carriers is of particular interest and demonstrates how granting the CTIA petition would create a greater potential burden for rural wireline carriers. As the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) points out, typically CMRS providers generally do not have direct interconnection with

[5] USTA Comments at ii
[6] TCA, Inc.-Telcom Consulting Associates at p. 3

rural LECs' rate centers, and therefore any porting obligation would require disproportional administrative costs to the rural LECs.[8] Also, because of the lack of direct connection between rural LECs and CMRS providers, a whole series of concerns are raised by the rural carriers concerning potential additional transport cost and compensation issues to port the numbers to points of interconnection outside the rural LECs' serving areas.[9] These complex compensation issues, which have a potentially significant impact on rural LECs, have not been addressed in the CTIA Petition and should not be ignored by the Commission.

1. CTIA's Petition is Contrary to the Telecommunications Act of 1996 (the Act) and Prior Commission Rulings.

Valor agrees with CenturyTel's comments that CTIA's proposal would create an unlawful disparity in numbering portability.[10] Century argues that CTIA's proposal would require wireline numbers to be ported to CMRS providers as long as the subscriber's rate center is within the CMRS provider's service area, which is typically much larger than the wireline carrier's rate center area. However, the reverse would not typically be available. The consumer who wanted to port a number from a CMRS provider to a wireline provider could only do so if their physical location is within the same wireline rate center associated with the wireless NPA-NXX. Century points out that Section 251 (e) of the Act requires the Commission make telephone numbers available on an equitable basis.[11] Neither the Act nor principles of equitable competition

[7] Comments of the Public Utilities Commission of Ohio at p.7
[8] OPASTCO Comments at p. 5
[9] Comments of the Michigan Exchange Carriers Association at p.5 and Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association at p.6
[10] Opposition of CenturyTel, Inc. at p. 5
[11] Opposition of CenturyTel, Inc. at p. 5

support the disparate arrangement advocated by CTIA. This disparity would be even greater for rural wireline carriers due to the fact that CMRS providers would likely locate their rate centers in the rate centers of the more urban wireline carriers.

The Independent Alliance comments correctly point out that the CTIA Petition, if granted, would result in location portability, which is not required of LECs either by the Act or by the Commission's Rules.[12] At this time, the Commission has required "service provider portability" but not "location portability". CTIA claims that its petition is not a request for location provider portability, which it admits the Commission has declined to require.[13] However, the Independent Alliance accurately points out that CTIA fails to explain how its request would result in anything other than location portability. The CTIA's reasoning that "[w]hen a CMRS carrier's service area overlaps the wireline rate center, the wireless carrier is providing service within the rate center, thus satisfying the requirements for service provider portability",[14] lacks any real credibility.

Valor agrees with the Independent Alliance comments that this explanation by CTIA fails to consider the consequences of its petition. Independent Alliance states, "that the telephone number would not simply be moved from one carrier to another but that the number can and will move from its original rate center location and be utilized for service in other rate centers, exchanges, and states. This result is factually the essence of location portability. CTIA cannot avoid the facts – it seeks location portability, not service provider portability."[15] The Commission should not be confused by CTIA's statement that their petition "is not a request for location provider portability" instead, the

[12] Comments of Independent Alliance at p.2
[13] CTIA Petition in footnote 5
[14] CTIA Petition in footnote 5
[15] Comments of Independent Alliance at p.3 and 4.

Commission needs to recognize the practical effect of granting CTIA's requested relief. Granting the relief would result in a significant change in Commission policy regarding location portability. The Commission should not make such a significant change without understanding all the consequences.

The CTIA Petition is also contrary to current Commission rules since it would require mandatory LNP regardless of the receipt of a bona fide request. The Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association describe the current Commission rules limitation with regard to switches in the largest 100 Metropolitan Statistical Areas (MSAs) and correctly points out that the CTIA Petition would eliminate the bona fide request trigger which was specifically provided to address the concerns of smaller and rural LECs and the potential burden on their networks and capital.[16] The issue of mandatory LNP in the largest 100 MSAs is being considered in the *LNP Further Notice* proceeding and should not be decided in this petition.

2. The CTIA Petition is Premature.

Valor concurs with USTA's position that it is premature to consider the CTIA Petition prior to the Circuit Court's issuance of a decision in *Cellular Telecommunications & Internet Association and Cello Parnerships, d/b/a Verizon Wireless v. FCC.*[17] There is no rationale reason to proceed in granting CTIA's petition regarding inter-modal LNP while the CTIA itself is seeking a reprieve from implementing wireless LNP. The expense, confusion and administrative efforts to

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[16] Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association at p. 5.
[17] USTA Comments at iii

implement the CTIA Petition would be unwarranted at this time given the legal uncertainty of a wireless LNP deployment requirement.

3. The CTIA Petition Would be More Appropriately Addressed in a Rulemaking, if CTIA Could Demonstrate a Public Interest Showing.

USTA and the Independent Alliance both suggest that due to the considerable cost and impact on customers and how the public would be impacted, that if the Commission wishes to address these issues it should be done in a rulemaking and not approved in this declaratory ruling.[18] Valor agrees. The Commission should not feel forced to approve the petition under the "artificial pressure" of the upcoming November 2003 wireless LNP deadline, as espoused by the CTIA. The fundamental issue regarding the rate center differences has been under discussion for years. A hasty decision in a declaratory ruling is not the proper forum for resolution of this major issue.

4. Granting CTIA's Request to Require Porting with only a Service-Level Porting Agreement and not a Complete Interconnection Agreement Should also be Denied.

When porting out a telephone number from an existing LEC NXX code, an interconnection arrangement is automatically initiated between two companies. Calls from this ported out number to other numbers within that NXX code are expected to occur, causing costs to be incurred and compensation to be requested. To allow porting out of any telephone number without an existing interconnection agreement is allowing the company porting in the telephone number to escape any interconnection compensation requirement. Valor agrees with CenturyTel's comments that there are

[18] Comments of Independent Alliance at p.6 and USTA Comments at p.8.

many instances where a CMRS provider and LEC do not have existing interconnection agreements that the CTIA Petition suggests are "already established".[19]

Valor has experienced considerable frustration in attempting to secure interconnection agreements with existing cellular carriers who have direct connections at a third party's tandem office. To allow any carrier to demand numbers be ported to their switch without requiring an interconnection agreement with terms and conditions and rates for compensation of such traffic denies the wireline carrier any compensation for the services provided for the usage terminating on the wireline carrier's network. Providing the opportunity to take advantage of such billing arbitrage should be discouraged, rather than encouraged as the CTIA Petition proposes. Interconnection agreements must be required and should include the terms and conditions and rates for requests of number portability, be it interim number portability or local number portability. CTIA's request for a service-level agreement in lieu of an interconnection agreement must be denied.

5. Granting the CTIA Petition Would be Bad Public Policy.

Numerous parties filed comments regarding the natural differences between wireline and wireless in the development of network architecture, billing systems, local calling areas and customer expectations.[20] The Commission should not view these differences as issues to "fix," and public policy should not artificially force a meshing of these different platforms. The differences themselves create the various alternatives and choices that competition is intended to deliver. SBC's comments say it best where they title a section of their comments as, "Wireless Carriers are from Venus; wireline carriers

[19] Opposition of CenturyTel, Inc at p.7.

are from Mars".[21] United States Cellular Corporation puts blame on the FCC when they state, "we believe, in the FCC's unwillingness to acknowledge in this context that wireless and wireline carriers are different from each other in their origins, operations, service areas and regulatory histories. In order to arrive at reasonable regulations, the needs and structures of both types of companies have to be taken into account."[22] The Commission should embrace these differences as promoting customer choice and inter-modal competition among different technology platforms.

Granting the petition would create disruption of billing systems and cause customer confusion. Several parties have expressed this concern and the CTIA Petition fails to provide a solution.[23] The Rural Telecommunications Group (RTG) expresses legitimate concerns that the logistics of which wireless carriers' rate centers will be used for rating calls has not been addressed.[24] Even the wireless commenters agree that there would be billing concerns. United States Cellular Corporation states, "USCC acknowledges that wireline rates are determined by rate center boundaries and that "porting" numbers throughout wireless service areas may raise complex billing issues for LECs."[25]

Finally, the petitioner's request is nothing more than an attempt to shift the implementation burden from the wireless carriers to the wireline carriers, and for wireless carriers to avoid the obligation to establish interconnection points and agreements. If granted, the CTIA petition would deny wireline carriers, especially rural carriers, their

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[20] Comments of SBC at p. 2, Comments of the Public Utilities Commission of California at p. 9, Comments of the Illinois Citizens Utility Board at p. 5, Comments of United States Cellular Corporation at p. 7.
[21] Comments of SBC at p. 2.
[22] Comments of United States Cellular Corporation at p. 7.
[23] OPASTCO Comments at p. 2, Comments of the Rural Telecommunications Group at p. 3.
[24] Comments of the Rural Telecommunications Group at p. 3.
[25] Comments of United States Cellular Corporation at p.4.

just compensation. Midwest Wireless Holding's comments are particularly enlightening. Midwest Wireless discusses the alleged difficulty of establishing direct interconnection agreements with the LECs, establishing T-1 facilities and securing blocks of numbers. It states, "[s]uch a network plan is not economically feasible in Midwest Wireless' rural markets."[26] Midwest Wireless's solution is to shift the cost and resolution of these problems to the LECs, without any consideration of the impact they would have on the rural LECs.

USTA recognized the enormity of the compensation implications of this petition: "if the Commission were to overturn itself and order LNP outside the wireline rate center, it would have a severe financial impact upon ILECs. It would require ILECs to reconfigure their networks at a substantial cost to both the carrier and consumer. In addition, it would require the FCC and ILECs to adjust the entire LNP scheme seven years after its implementation."[27] Also, the Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association acknowledge that compensation shortfalls may result when carriers seek to use NPA-NXX codes with routing points that differ from rating points, as in the case for numbers ported to a wireless carrier's points of interconnection outside the rural carrier's serving areas. They conclude, "[i]n such cases, wireless carriers can circumvent intercarrier compensation mechanisms and obtain indirect interconnection to independent ILEC networks without paying compensation for terminating traffic."[28] The CTIA Petition and

[26] Midwest Wireless Comments at p. 3 and 4.
[27] USTA Comments at p. 8.
[28] Joint Comments of the National Exchange Carrier Association, Inc. and the National Telecommunications Cooperative Association at p.6.

wireless industries comments provide no solution to these issues because it's not their problem. The Commission however cannot and should not ignore these consequences.

CONCLUSION

For the reasons stated above, Valor urges the Commission to deny CTIA's Petition since it 1) is contrary to the Telecommunications Act of 1996 (the Act) and prior Commission rulings, 2) is premature in seeking relief, 3) would be more appropriately addressed in a rulemaking, if a public interest showing could be demonstrated, which CTIA has not demonstrated, 4) should be denied since it requires porting with only a service-level agreement and not a complete interconnection agreement and, 5) would be bad public policy if it were granted.

Respectfully submitted,

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March 13, 2003